



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

July 3, 2013  
PR 13-13

Michael A. Kelly, Esquire

**RE: Law Offices of Michael Kelly v. City of Woonsocket**

Dear Attorney Kelly:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the City of Woonsocket ("City") is complete. By correspondence dated March 15, 2013, you allege the City violated the APRA when it failed to respond to your Office's APRA request dated December 21, 2012 for documents concerning the Water Treatment Plant Project Advisory Committee and the City's acquisition of land for a new water treatment plant. By correspondence dated April 3, 2013, you indicated that, on April 3, 2013, you received all of the documents requested from the City, except documents responsive to Request No. 8:<sup>1</sup>

8. Any and all documents, correspondence and communications, including e-mails, including but not limited to a purchase agreement, that relate to the acquisition of land for the new water treatment plant.

Accordingly, the issue you present for our review is the City's untimely response and failure to provide records responsive to Request No. 8.

In response to your complaint, we received an affidavit from the City Clerk of Woonsocket, Ms. Andrea Bicki. Ms. Bicki states, in pertinent part:

1) I am the City Clerk of the City of Woonsocket.

---

<sup>1</sup> Your letter indicates that Attorney Carroll, solicitor for the City of Woonsocket, was copied on your April 3, 2013 letter to this Department.

- 2) In my capacity as Clerk, I oversee compliance with requests brought pursuant to RIGL 38-2[.]
- 3) The request by Mr. Kelly was on December 21, 2012. At the time it was received by my office, I was on vacation. The first date I physically saw the request was on January 2, 2013.
- 4) My first impression regarding the request was that it was extremely voluminous and would require documents that would be difficult to gather. \*\*\*
- 5) On January 4, 2013 I forwarded the request to Mayor Leo Fontaine and Sheila McGauvran, the Director of Public Works. My notice to them reflected that a response by January 16, 2013 was required or alternatively by February 13 \*\*\*.
- 6) I acknowledged receipt of the request to Atty. Sylvia on January 4, 2013 \*\*\*.
- 7) On January 16, 2013 I requested an extension from Attorney Sylvia \*\*\*.
- 8) Ultimately the records requested were forwarded to Atty. Kelly on April 2, 2013.
- 9) It should be noted that at no time was an issue presented as to the right of access to any record.
- 10) It should be further noted in mitigation that the City of Woonsocket operates under the auspices of a statutorily created Budget Commission. As City Clerk, I am also the clerk of the Budget Commission. The responsibility entailed with that function is excessively time consuming.
- 11) While there certainly was a violation in that the documents were not delivered on a timely basis, I believe that I made a good faith effort to comply with the request; ultimately satisfied the request and that the delay was not the result of knowing and willful actions.

We acknowledge receipt of your reply to the City's response.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the City

violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Under the APRA, a public body has ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7. If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. See R.I. Gen. Laws § 38-2-7(a). If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). If, for good cause, the public body cannot comply with a records request within ten (10) business days, then the public body may extend the period an additional twenty (20) business days, for a total of thirty (30) business days. See id.; see also R.I. Gen. Laws § 38-2-3(e).

Here, it is undisputed that you made an APRA request on December 21, 2012. Time to respond to an APRA request begins to run when the public body, not the person who oversees APRA compliance, receives the request. See R.I. Gen. Laws § 38-2-3(e) (“A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request.”). Ms. Bicki states that she personally did not receive your APRA request until January 2, 2013 because she had been on vacation, but compliance with the APRA is not tolled when the designated public records officer, or the person who oversees APRA compliance requests, is unavailable. Although arguably not directly on point, the APRA does contemplate such a situation in Rhode Island General Laws § 38-2-3(d), which states that “[t]he unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records\*\*\*.” It is the responsibility of the public body to have policies and procedures in place to handle APRA requests when the designated public records officer is unavailable. Even with an extension of an additional twenty (20) business days, the City should have responded to your request by February 6, 2013 and its failure to do so violated the APRA.<sup>2</sup>

Notwithstanding the above, and giving the City every benefit of the doubt, the City still violated the APRA even when using the City’s date of January 2, 2013 as the date the public body received your request. In her affidavit, Ms. Bicki states that the City had until February 13, 2013 to provide a response. Thirty (30) business days from January 2, 2013, however, is February 14, 2013 (excluding Martin Luther King, Jr. Day as a non-business holiday). It is undisputed, however, that the City did not make the requested documents available to you until April 2, 2013, more than a month after the February 13, 2013 deadline the City designated as the proper date by which to respond to your APRA request. The fact that even by the City’s calculation the City was six (6) weeks late with its response is of great concern to this Department and raises the specter of a knowing and willful violation.<sup>3</sup>

---

<sup>2</sup> The date of February 6, 2013 accounts for the following non-business days for the purposes of our count: Christmas Day, New Year’s Day, and Martin Luther King, Jr. Day.

<sup>3</sup> The timeline of events is as follows:

You further contend that, upon receipt of the documents on April 3, 2013, documents responsive to Request No. 8 were not included. The evidence provided demonstrates that the City provided no written explanation detailing specific reasons for withholding these documents, nor has the City addressed this issue before this Department. Thus, we find that the City also violated the APRA when it did not provide you with the documents responsive to Request No. 8, or in the alternative, provide you a reason for exempting these documents. See R.I. Gen. Laws § 38-2-7(a).

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter\*\*\*.” See R.I. Gen. Laws § 38-2-9(d).

This Department has found the City in violation of the APRA on three (3) prior occasions.<sup>4</sup> Each of these violations was found because we determined the City did not respond to an APRA

- 
- December 21, 2012: Your office made an APRA request to the City for certain documents.
  - January 2, 2013: Ms. Bicki returns to work after her vacation and sees your Office’s APRA request for the first time.
  - January 4, 2013: Ms. Bicki forwards the request to the Mayor and the Director of Public Works. Ms. Bicki’s January 4, 2013 email to the Mayor and the Director of Public Works indicates that a response was due by January 16, 2013 (ten business days from January 2, 2013) or by February 13, 2013 (with the additional twenty business day extension). Ms. Bicki also acknowledges receipt of the APRA request to your Office on this date.
  - January 16, 2013: Ms. Bicki requests an additional twenty (20) business day extension.
  - March 15, 2013: You filed an APRA complaint with this Department, alleging the City violated the APRA when it failed to timely respond to your APRA request.
  - April 2, 2013: The City forwards documents to your Office that are response to each of your requests except Request No. 8, which was not addressed in its response to you.
  - April 3, 2013: You receive the documents forwarded by the City on April 2, 2013.

<sup>4</sup> See Woonsocket Fire Fighters Association Local No. 732 v. City of Woonsocket, PR 09-28; Woonsocket Fire Fighters Association Local No. 732 v. City of Woonsocket, PR 09-28B; Ward v. City of Woonsocket, PR 09-27; Ward v. City of Woonsocket, PR 00-14. In addition to these previous findings, this Department also filed a lawsuit against the City, related to PR 09-28 and PR 09-28B, for failing to timely respond to an APRA request made on behalf of the Woonsocket Fire Fighters Association Local No. 732. See Lynch v. City of Woonsocket, CA No. 09-7383. In the lawsuit, a consent judgment entered whereby the City agreed to pay the State one thousand

request within ten (10) business days. Our concern whether the City committed a knowing and willful violation in the instant matter is heightened by previous violations found against the City for an untimely response to APRA requests, which includes a lawsuit that resulted in a civil penalty. Even if we ignore the City's history, we have serious concerns about the gap between February 13, 2013, the date the City believed a response was due, and April 2, 2013, the date the City sent most of the responsive documents. This gap leaves us with many unanswered questions, chief among them why the City took almost six (6) additional weeks to respond to your APRA request when it acknowledged its response was due by February 13, 2013, assuming the City's calculations were correct. Thus, we shall allow the City ten (10) business days from receipt of this letter to explain its lack of a response to Request No. 8 and provide us with a response explaining the lapse of time between February 13, 2013 and April 2, 2013, and why we should not find this violation knowing and willful, or alternatively, reckless.<sup>5</sup> We will also allow the City ten (10) business days from receipt of this letter to provide us with a response as to why the City's lack of response to Request No. 8 should not be found willful and knowing, or alternatively, reckless.

A copy of any and all responses by the City should be presented to you. If you wish, you may also present evidence or arguments addressing this issue within the same timeframe, which must also be forwarded to legal counsel for the City. Any arguments presented should be factually and/or legally based and not conclusionary. At the end of this time period, we will issue our supplemental finding on this matter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Maria R. Corvese  
Special Assistant Attorney General

Cc: Joseph P. Carroll, Esq.

---

dollars (\$1000.00) for knowingly and willfully violating Rhode Island General Laws § 38-2-7(a).  
See id.

<sup>5</sup> This Department provides guidance in recent findings for what type of violation may be considered reckless. See O'Rourke v. Bradford Fire District, PR 13-11; Catanzaro v. East Greenwich Police Department, PR 13-08.